2882

SUPREME COURT OF THE UNITED STATES.

No. 198.

THE UNION INSURANCE COMPANY, PL'FFS IN ER.,

vs.

JOHN BLAIR HOGE.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE NORTHERN DISTRICT OF NEW YORK.

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GIDEON, print.

2883

UNITED STATES OF AMERICA,
Northern District of New York, ss.

Augustus A. Boyce, clerk of the circuit court of the United States of America for the northern district of New York, in the second circuit, do hereby certify, that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at my office in the city of Utica, in said district, on this 23d day of September, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the said United States the eighty-third.

[SEAL.]

AUG. A. BOYCE, *Clerk.*

At a circuit court of the United States for the second circuit, in the northern district of New York, held at Cooperstown, in the State of New York, on the 27 (the twenty-seventh) day of August, in the one thousand eight hundred and fifty-eight.

Present, the Hon. Samuel Nelson, one of the judges of said court.

JOHN BLAIR HOGE
vs.
THE UNION INSURANCE CO. } Decision and order for judgment.

This cause having been brought on to be heard on the declaration of the plaintiff, the defendants' plea, and the plaintiff's demurrer thereto, and after hearing Henry R. Mygatt, of counsel for the plaintiff, and Henry Van Der Lyn, of counsel for the defendants, and due deliberation being had thereupon, it is adjudged that the defendants, by the act of the legislature of the State of New York, passed April 10, 1849, entitled "An act to provide for the incorporation of insurance companies," and by the charter of the defendants' company, were authorized to issue policies of insurance for a cash premium in lieu of a premium note, and that as the defendants' policy of insurance was issued for cash only, that the same is a valid policy. And it is further adjudged, that the premium notes of the defendants, and the moneys of the defendants collected on premium notes, and all of the assets of the defendants, are equally liable for the payment of losses on policies of insurance issued for a cash premium only in lieu of premium notes as for losses on policies of insurance based on premium notes only.

And it is further adjudged, that the demurrer of the plaintiff to the defendants' plea be, and the same is hereby, sustained, and that judgment, final, be rendered for the plaintiff on said demurrer

to the amount of two thousand and five hundred dollars, with interest thereon at the rate of seven per cent. from the thirtieth day of June, in the year one thousand eight hundred and fifty-two, with costs, to be taxed as provided by law, and that judgment be entered accordingly with the clerk of the court.

S. NELSON, *Justice.*

Filed September 15, 1858.

Circuit Court of the United States for the second circuit and northern district of New York.

Pleas before the judges of the circuit court of the United States for the second circuit and northern district of New York, at the capital, in the city of Albany, in the State of New York, on the first Monday of April, in the year one thousand eight hundred and fifty-eight.

Witness the Hon. Samuel Nelson, one of the judges of said court.

AUGUSTUS A. BOYCE, *Clerk.*

STATE OF NEW YORK,
Chenango County, ss.

Be it remembered, that on the first Monday of April aforesaid, before the judges aforesaid, comes John Blair Hoge, plaintiff in this cause, by Henry R. Mygatt, his attorney, and now here brings here into the said court before the said judges his certain bill against the Union Insurance Company, defendants in this cause, in a plea of trespass on the case upon promises, and which said bill follows in these words, to wit:

CHENANGO COUNTY, *ss.*

John Blair Hoge, plaintiff in this cause, by Henry R. Mygatt, his attorney, complains of the Union Insurance Company, defendants, by filing a declaration, and not by writ of a plea of trespass on the case upon promises, for that whereas the said defendants is a Mutual Insurance Company, and an incorporation organized and formed under and by virtue of an act of the legislature of the State of New York, entitled "An act to provide for the incorporation of insurance companies," passed April 10, 1849, and one Remington B. Kounslar, a resident of the State of Virginia, made application to become insured in said insurance company, in the sum of two thousand and five hundred dollars, on his Phœnix paper mill, machinery and stock therein contained, situated in the county of Berkley, in said State of Virginia, and that, on the first day of November, 1851, the said defendants, for and in consideration of the sum of fifty-six and $\frac{25}{100}$ dollars, made, executed and delivered to the said Remington B. Kounslar a policy of insurance, No. 101, duly signed by the president and secretary of said insurance company, whereby the said insurance company certified that the said Remington B. Kounslar had become and was insured in and

by said company upon the property described as aforesaid, in the sum of two thousand and five hundred dollars, for the term of one year, commencing on the first day of November, 1851, at one o'clock p. m. of said day, and ending on the first day of November, 1852, at one o'clock of said day.

The said insurance company did therefor promise to settle and pay unto the said Remington B. Kounslar, or his assigns, all losses and damage not exceeding the sum of two thousand and five hundred dollars, which shall or may happen to the aforesaid property by reason of or by means of fire, during the time said policy shall remain in force.

And said plaintiff further says, that since the said policy of insurance was executed and delivered to the said Remington B. Kounslar, the said Phœnix paper mill, machinery and stock therein contained, and mentioned in said policy, were destroyed by fire, which occurred on the morning of the thirteenth day of April, 1852, about two o'clock a. m., which was a loss to the said Remington B. Kounslar to the amount of twenty thousand dollars, as near as the same can be estimated.

And the said plaintiff further says, that due notice of said fire and proof of loss was given to said insurance company, in the manner required by them, on the thirtieth day of April, 1852, and according to the conditions of said policy, the said two thousand and five hundred dollars became due and payable to the said Remington B. Kounslar on the thirtieth day of June, 1852.

And the plaintiff further says, that since said fire and since the said thirtieth day of June, 1852, the said Remington B. Kounslar, for value received, did duly sell, assign, and set over to the said plaintiff, who is a resident of Martinsburgh, in the State of Virginia, the said policy of insurance, and all dues and demands arising thereon, and his claims against the defendants for such loss.

Whereupon, the said plaintiff demands judgment against the said defendants for the sum of two thousand and five hundred dollars, and interest thereon from the thirtieth day of June, 1852, and the costs of this action.

HENRY R. MYGATT,
Plaintiff's Attorney.

Circuit Conrt of the United States, second circuit, northern district of New York.

THE UNION INSURANCE COMPANY
ads.
JOHN BLAIR HOGE.
} Plea.

And the said defendants, by Henry Van Der Lyn, their attorney, come and defend the said action brought by the plaintiff, and say that the said plaintiff ought not to sustain his said action, because the said defendants say that the said defendants, in the month

of August, 1850, became and were duly organized as a corporation, under the provisions of an act of the legislature of the State of New York, entitled "An act to provide for the incorporation of insurance companies," passed April 10, 1849, a copy of which act is hereunto annexed, marked Schedule A; and that the said incorporation was to make insurance on dwelling-houses, stores, and all kinds of buildings, and upon household furniture and other property, against loss or damage by fire, as provided by the second subdivision of the first section of the said act, on the plan of mutual insurance, and that by virtue of such incorporation, said defendants became and were duly authorized and empowered to make contracts and issue policies for such insurances aforesaid, to such persons, and those only, who should become members of said corporation, by the giving of premium notes, and to no other persons and in no other manner whatever, as will more fully appear by said act, passed April 10, 1849, and the charter of said company; of which charter, the parts material to the question raised by this plea are hereinafter set forth.

That the said corporation filed their declaration of intention, as required by said act of April 10, 1849, signed by the thirteen corporators, and dated March 9, 1850, expressing their intention to make "insurance on dwelling-houses, stores, and all kinds of buildings, household furniture, merchandise and other property, against loss or damage by fire, and the risk of inland navigation and transportation;" and which declaration comprised a copy of the charter proposed to be, and which said charter was adopted by said corporation, the second section of which charter is as follows:

"2. Said company is formed to make insurance on dwelling-houses, stores, and all kinds of buildings, and upon household furniture, merchandise and other property, against loss or damage by fire, and the risk of inland navigation and transportation, as provided in the second subdivision of the first section of the aforesaid act. Its business shall be conducted on the plan of mutual insurance, and it shall possess all the powers conferred by said act, which now are or hereafter may be conferred by law upon an incorporated company formed under said act for the purpose aforesaid, whose business is to be conducted on the plan aforesaid."

The third section of said charter provides, that the village of Fort Plain, in the county of Montgomery, in the State of New York, shall be the place where the office of said company shall be located and the general business of the company carried on. The fifth section of said charter provides, that "the rights, powers and privileges now or hereafter conferred by law on this company, are hereby vested in and delegated to, and shall be exercised by, a board of directors, to consist of thirteen persons, and the directors shall be elected by persons holding the policies of insurance in the company, or their proxies, and one vote shall be allowed on every one hundred dollars insured."

The eighth, ninth, and tenth sections of said charter are as follows:

"8. The rates of insurance shall be from time to time fixed and regulated by the company, and premium notes therefor shall be received from the insured, which shall be paid at such time or times and in such sum or sums as the corporation shall from time to time require. Any person applying for insurance, so electing, may pay a cash premium in addition to a premium note, or a definite sum in money, to be fixed by said corporation, in full for said insurance, and in lieu of a premium note."

"9. The capital stock of this company shall be at least one hundred thousand dollars, consisting of premium notes and premiums received, and such capital as, by consent of the board of directors, shall have been added."

"10. The board of directors may, pursuant to the provisions of the said act, unite a cash capital to any extent, as an additional security to the members, over and above their premium and stock notes, and prescribe the mode and manner in which such cash capital shall be subscribed and united as aforesaid."

That the said charter was examined by the Attorney General, pursuant to the eleventh section of the act passed April 10, 1849, and by him certified to the comptroller of the State, as follows:

"ATTORNEY GENERAL'S OFFICE,
March 27th, 1850.

"I have examined the within certificate of incorporation, and find it to be in conformity with the statute laws of this State, and not inconsistent with the Constitution.

L. S. CHATFIELD,
Att'y General."

That the comptroller of the State thereupon caused an examination to be made, as required by the said eleventh section, who made the certificate required by said act; copies of which certificate were duly filed, as required by the act, and were in form following:

"Whereas 'The Union Insurance Company,' located at Fort Plain, in the county of Montgomery, has filed a copy of its charter in the office of the secretary of State, in pursuance of the act entitled 'An act to provide for the incorporation of insurance companies,' passed April 10th, 1849, and the attorney general has certified to me that he has examined the said charter, and found the same to be in accordance with the requirements of the said act, and not inconsistent with the constitution or laws of this State:

"Now, therefore, I, Washington Hunt, comptroller of the State of New York, do hereby appoint Jabez D. Hammond, esq., of Cherry Valley, Otsego county, Howland Fish, of Fultonville,

Montgomery county, and George Petrie, of Little Falls, Herkimer county, to make an examination of the capital, securities, and affairs of the said company, and to certify upon oath the result of such examination, pursuant to section eleven of the act aforesaid.

"In witness whereof, I have hereunto subscribed my name, and caused the seal of my office to be affixed, at the city of [L. S.] Albany, the third day of August, 1850.

WASHINGTON HUNT,
Comptroller.

"We, the undersigned, appointed on the third day of August inst., by the Hon. Washington Hunt, comptroller of the State of New York, to make an examination of the capital, securities, and affairs of 'The Union Insurance Company,' at Fort Plain, do certify that we have made such examination, and do certify that the said company have received and are in actual possession of premium notes, based on applications for insurance, to the full extent required by the fifth section of the act entitled 'An act to provide for the incorporation of insurance companies,' passed April 10, 1849, to wit, to the amount of one hundred thousand dollars. Dated Fort Plain, August 9th, 1850.

JABEZ D. HAMMOND,
HOWLAND FISH,
GEORGE PETRIE."

"STATE OF NEW YORK,
Montgomery County, ss.

"Jabez D. Hammond, Howland Fish, and George Petrie, being severally sworn, do depose and say, each for himself, that the above certificate is true, to the best of his knowledge and belief.

JABEZ D. HAMMOND,
HOWLAND FISH,
GEORGE PETRIE.

"Sworn and subscribed before me; this 9th day of August, 1850.

JAMES W. HAMILTON,
Justice of the Peace."

"COMPTROLLER'S OFFICE,
Albany, August 10th, 1850.

"A report having been made to me, on oath, by Jabez D. Hammond, George Petrie, and Howland Fish, esquires, who were appointed by me, on the 3d day of August inst., to examine the capital, securities, and affairs of 'The Union Insurance Company,' located at Fort Plain, in the county of Montgomery, in pursuance of section eleven, of chapter 308, of the laws of 1849, from which report it appears 'that the said company have received and are in actual possession of premium notes, based on applications for in-

surance, to the full extent required by the fifth section of the act entitled 'An act for the incorporation of insurance companies,' passed April 10th, 1849, to wit, to the amount of one hundred thousand dollars,' I do hereby certify that the said company is possessed of an amount of capital equal to the amount specified in the 5th section of the aforesaid chapter.

PHILIP PHELPS,
Dep'y Comptroller."

And thereupon the defendants in August, 1850, commenced business, and issued policies of insurance, and in June, 1853, the said defendants became insolvent and unable to pay its debts.

That the said defendants, from the time of their commencing business and issuing policies of insurance, in August, 1850, and up to June, 1853, when the defendants became insolvent, and during each and every month of said time, issued policies of insurance founded upon premium notes, and also policies of insurance for an advance cash premium, and for which no part thereof was premium notes, and that during that time over two thousand policies of insurance were issued founded upon premium notes, and that over two thousand and five hundred policies of insurance were during that time issued, the premiums received for which were to no part thereof in premium notes, and that the amount of forty-three thousand dollars was during that time paid to defendants for policies in cash, and for which no premium note was made, and that the entire moneys received for cash policies have been expended by the defendants in payment of the real or supposed liabilities of the defendants. That when the said defendants became insolvent, in June, 1853, there was due from the defendants for losses on policies of insurance founded on premium notes to an amount between twenty and twenty-five thousand dollars, and there was claimed to be due for losses for policies issued for cash, and for which no premium note was made, to an amount exceeding thirty thousand dollars, and that there are no assets to pay the losses of said company other than the premium notes, and that the avails of said premium notes will not pay the losses arising on the policies of insurance, which policies were founded on premium notes. That said policies of insurance issued for a cash advance premium were issued in pursuance of the by-laws of said company, and were publicly and extensively advertised by the directors of said company to be so issued, and that they were so issued, with the approval of the several boards of directors of said company.

And the said defendants further say that the said Remington B. Kounslar, in the said declaration mentioned, by the payment of the said cash advance premium, did not become a member of said corporation, and that as he never gave to said corporation a premium note as required by the said act of April 10, 1849, that therefore

said policy of insurance in said declaration particularly described and counted upon was and is wholly unauthorized by the said act, and of no force or effect upon and against the said defendants, and was and is utterly void, and hereupon the said defendants put themselves upon the country, and the said plaintiff likewise.

HENRY VAN DER LYN,
Defendants' Attorney.

(*Schedule* A.)

CHAP. 308.—AN ACT to provide for the incorporation of insurance companies. Passed April 10, 1849.

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Any number of persons, not less than thirteen in number, may associate and form an incorporated company for either of the following purposes, to wit:

1. To make insurance upon vessels, freights, good, wares, merchandise, specie, bullion, jewels, profits, commissions, bank notes, bills of exchange and other evidences of debt, bottomry and respondentia interests, and to make all and every insurance appertaining to or connected with marine risks and risks of transportation and navigation.

2. To make insurance on dwellings, houses, stores, and all kinds of buildings, and upon household furniture, merchandise and other property, against loss or damage by fire, and the risks of inland navigation and transportation.

3. To make insurance upon the health on lives of individuals, and every insurance appertaining thereto or connected with health or life risks, and to grant, purchase, or dispose of annuities.

§ 2. Any company organized under this act shall have power to make re insurance of any risks taken by them, respectively, and may make insurance upon any or all of the risks mentioned in the first or second subdivisions of the first section. But no company making insurance on the health or lives of individuals shall be permitted to take any other kind of risks; nor shall the business of life insurance and of health insurance be in anywise connected or united in any company making insurance on marine or fire risks.

§ 3. Such persons shall file in the office of the secretary of state a declaration, signed by all the corporators, expressing their intention to form a company for the purpose of transacting the business of insurance, as expressed in the several subdivisions of the first section of this act; which declaration shall also comprise a copy of the charter proposed to be adopted by them, and shall publish a notice of such their intention once in each week for at least six weeks in a public newspaper in the county in which such insurance company is proposed to be located.

§ 4. It may and shall be lawful for the individuals associated for the purpose of organizing any company under this act, after having published the notice and filed their declaration and charter as required by the preceding section, to open books for subscription to the capital stock of the company so intended to be organized, and to keep the same open until the full amount specified in the charter is subscribed; or, in case the business of such company is proposed to be conducted on the plan of mutual insurance, then to open books to receive propositions, and enter into agreements in the manner and to the extent hereinafter specified.

§ 5. No joint stock company organized for the purposes mentioned in this act shall be organized in the city and county of New York, nor in the county of Kings, with a smaller capital than one hundred and fifty thousand dollars; nor in any other county in this State with a smaller capital than fifty thousand dollars; nor shall any company formed for the purpose of doing the business of marine, or fire, or inland navigation insurance, on the plan of mutual insurance, commence business, if located in the city of New York or in the county of Kings, until agreements have been entered into for insurance with at least one hundred applicants, the premiums on which, if it be marine, shall amount to three hundred thousand dollars, or if it be fire or inland navigation, shall amount to two hundred thousand dollars, and notes have been received in advance for the premiums on such risks, payable at the end of or within twelve months from date thereof, which notes shall be considered a part of the capital stock, and shall be deemed valid, and shall be negotiable and collectable for the purpose of paying any losses which may accrue or otherwise; nor shall any mutual insurance company, in any other county in the State, commence business until agreements have been entered into for insurance, the premiums on which shall amount to one hundred thousand dollars, and the notes received therefor, payable as aforesaid, and which notes shall be liable for and used as aforesaid; nor shall any company which may be organized under this act expose itself to any loss on any one fire or inland navigation risk or hazard to an amount exceeding ten per cent. of its capital.

§ 6. No company formed for doing the business of life or health insurance on the plan of mutual insurance shall commence business until a cash capital of one hundred thousand dollars shall have been paid in and actually invested either in the stocks of the incorporated cities of this State, the stocks of this State, or of the United States, or in bonds and mortgages on cultivated farms worth double the amount for which the same is mortgaged; the value of the land to be appraised by three disinterested commissioners, appointed by the first judge of the county where such company is to be located. Farm buildings to form no part of the valuation.

§ 7. It shall not be lawful for any company organized under this act to transact business unless possessed of capital or securities as hereinbefore mentioned; nor shall it be lawful for any agent or agents of insurance companies incorporated by other States directly or indirectly to take risks, or transact any business of insurance in this State, without procuring a certificate of authority from the comptroller of this State, and such agent or agents having procured a statement under the oath of the president or secretary of the company for which he or they may act, which statement shall show the amount of the capital of such company, the manner in which the same is invested, and shall also state the fact whether its capital is impaired, and if so, how much; such statement shall be filed in the office of the county clerk of the county where such agent resides, and shall be published in at least one newspaper, if a newspaper be therein published, at least six successive weeks after the filing of such statement as aforesaid; the first statement shall be filed in the month of January next, and such statement shall be procured annually, and filed and published in each and every succeeding month of January thereafter, as long as such agency continues, and no company incorporated by other States shall transact business in this State unless possessed of the amount of actual capital required of companies formed under the provisions of this act, and no agency of any life insurance company formed under the laws of other States shall transact its business in this State, unless it shall first prove, to the satisfaction of the comptroller, of which fact he shall give a certificate to be filed in the office of the clerk of the county where such agency is established, that it possesses such an amount of actual capital as is required of companies transacting the business of life insurance under the laws of this State. Nor shall it be lawful for any agent or agents, hereafter to be appointed, of any company incorporated by any foreign government, other than the States of this Union, for the purpose of insurance, to transact the business of insurance in this State, without procuring a certificate of authority from the comptroller; such agent or agents having previously furnished evidence to the satisfaction of the comptroller of the State, that such company has invested in the stocks of this State, or the United States, an amount equal to the amount of capital or security required by this act, and such stocks are held in trust by citizens of this State for the benefit and security of such as may affect insurance with him or them. And the agent or agents furnishing satisfactory evidence as aforesaid, shall be entitled to a certificate thereof from the comptroller aforesaid. The statements and evidences of investments required by this section shall be renewed from year to year, in the month of January in each year, and the comptroller, on being satisfied that the capital, securities, and investments remain secure as at first, shall furnish a renewal of certificates as aforesaid; and the agent or agents

obtaining such certificates shall file the same, together with a copy of the statements on which it was obtained or renewed, in the office of the clerk of the county in which such agency shall be established, and shall cause the same to be published in at least one newspaper published in such county. Any violation of the provisions of this section shall subject the party violating to a penalty of five hundred dollars for each violation, which shall be sued for and recovered in the name of the people, by the district attorney of the county in which the agent or company so violating shall be situated, and the said penalty, when recovered, shall be paid into the treasury of said county, provided that all companies incorporated by any government, other than the States of this Union, which may have appointed such agent or agents before the first day of March, one thousand eight hundred and forty-eight, may hereafter appoint a new agent or agents in the case of the death, resignation, or removal of an agent or agents previously appointed. The term agent or agents, used in this section, shall include an acknowledged agent or surveyor, or any other person or persons who shall, in any manner, aid in transacting the insurance business of an insurance company not incorporated by the laws of this State.

§ 8. It shall be lawful for any company organized under this act to invest its capital or the funds accumulated by its business, or any part thereof, in bonds and mortgages on unincumbered real estate within the State of New York, worth fifty per cent. more than the sum loaned thereon, and also in the stocks of this State, or of the United States, and also in any or all stocks or bonds of either of the incorporated cities of this State, and which stocks or bonds shall be at or above par at the time of such investment, and to lend the same or any part thereof, on the security of such stock or bonds, and any company organized for the purpose of marine insurance may, in addition to the foregoing, loan their funds on bottomry and respondentia, and change and re-invest the same, as occasion may from time to time require.

§ 9. No company organized by or under the provisions of this act shall be permitted to purchase, hold, and convey real estate, excepting for the purposes and in the manner herein set forth, to wit:

1. Such as shall be requisite for its immediate accommodation in the transaction of its business; or,

2. Such as shall have been mortgaged to it in good faith, by way of security for loans previously contracted, or for moneys due; or,

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings; or,

4. Such as shall have been purchased at sales upon judgments, decrees or mortgages obtained or made for such debts; and it shall

not be lawful for any company incorporated as aforesaid to purchase, hold, or convey real estate in any other case, or for any other purpose; and all such real estate as may be acquired as aforesaid, and which shall not be necessary for the accommodation of such company in the convenient transaction of its business, shall be sold and disposed of within five years after such company shall have acquired title to the same, and it shall not be lawful for such company to hold such real estate for a longer period than that above mentioned, unless the said company shall procure a certificate from the comptroller, that the interests of the company will suffer materially by a forced sale of such real estate; in which event the time for the sale may be extended to such time as the comptroller shall direct in said certificate.

§ 10. In addition to the foregoing provisions, it shall be the duty of the corporators of any and every company organized under this act to declare in the charter, which is herein required to be filed, the mode and manner in which the corporate powers given under and by virtue of this act are to be exercised, the mode and manner of electing trustees or directors, a majority of whom shall be citizens of this State, and the filling of vacancies, the period for the commencement and termination of its fiscal year, together with the amount of capital to be employed in the transaction of its business.

§ 11. The charter thus filed by the corporation shall be examined by the Attorney General, and if found to be in accordance with the requirements of this act, and not inconsistent with the constitution or laws of this State, he shall certify the same to the comptroller of the State, and the said comptroller shall thereupon cause an examination to be made, either by himself or by three disinterested persons specially appointed by him for that purpose, who shall certify under oath that an amount equal at least to the amount specified in the fifth section of this act, if it be a stock company, has been paid in and is possessed by it in money, or in such stocks and bonds and mortgages as are required by the eighth section of this act; or if a mutual company, that it has received and is in actual possession of the capital, premiums or engagements of insurance, as the case may be, to the full extent required by the fifth section of this act; or, if it be a life and health insurance company, to the full amount, and invested in the same manner as required by the sixth section of this act, copies of such certificate shall be filed in the office of the secretary of state, whose duty it shall then be to furnish the corporation with a certified copy of the charter and certificates aforesaid, which, upon being filed by them in the office of the clerk of the county in which their company is to be located, shall be their authority to commence business and issue policies, and the same may be used in evidence for or against said corporation.

§ 12. The corporators or the trustees or directors, as the case may be, of any company organized under the provisions of this act, shall have power to make such by-laws, not inconsistent with the constitution or laws of this State, as may be deemed necessary for the government of its officers and the conduct of its affairs.

§ 13. It shall be the duty of the president or vice president, and secretary of each company organized under this act, annually on the first day of January, or within one month thereafter, to prepare under oath, and deposit in the office of the comptroller of the State, as well as in the office of the clerk of the county in which such company shall be located, and in each and every other county in which such company shall have an agency, and shall also cause to be published in at least one newspaper published in such county, a statement exhibiting the total amount of premiums received, and the total amount of losses paid and ascertained, including expenses during the year; also the amount of debts owing by the company at the date of the statement, and the amount of claims which then exist against the company for losses accrued, showing what amount of such claims for losses is payable on demand, what amount thereof is considered fair or legal, the payment of which has not then matured according to the contract, and what amount thereof is resisted on account of alleged fraud, or for which the company do not consider themselves legally liable; also a statement of the securities representing the capital stock, and all funds of the company; and also whether any of the securities held or owned by such company are considered bad or doubtful, and if so, specifying the amount of such securities, and the gross amount of outstanding risks thereon, and a list of the stockholders, if a stock company, together with the amount of their respective shares; and if upon due examination it shall appear to the comptroller that the losses and expenses of any stock company during the year have exceeded the premiums, and in consequence thereof the capital of such company has become deficient, or from any other cause has become impaired to the extent of twenty-five per cent., it shall be the duty of the said comptroller to direct the officers of any such company, within sixty days, to proceed to wind up its business, unless within that time the stockholders thereof shall pay in the amount of such deficiency. Any company receiving such requisition from the comptroller shall forthwith call upon its stockholders for such amounts as will make its capital equal to the amount fixed by the charter of the said company, and in case any stockholder of such company shall refuse or neglect to pay such call, after notice personally given or by advertisement, in such time and manner as the comptroller shall approve, it shall be lawful for the said company to require the return of the original certificates of stock held by such stockholder, and in lieu thereof to issue new certificates for such number of shares as the said stockholder may be entitled to in the proportion that

the ascertained value of the funds of the said company may be found to bear to the original capital of the said company, the value of such shares for which new certificates shall be issued to be ascertained under the direction of the comptroller, and the company paying for the fractional parts of shares; and it shall be lawful for the directors of such company to create new stock and dispose of the same, and to issue new certificates therefor to an amount sufficient to make up the original capital of the company. And it is hereby declared that in the event of any additional losses accruing upon new risks, taken after the comptroller shall have made the requisition aforesaid, and before the said deficiency shall have been made up, the directors shall be individually liable to the extent thereof. And if upon due examination it shall appear to the comptroller that the losses and expenses of any company chartered on the plan of mutual insurance under this act, shall during the year have exceeded the premiums, and in consequence thereof that the capital of the company, as required in its organization, has become deficient, or from any other cause has become impaired, it shall be the duty of the comptroller to direct the officers of such mutual insurance companies to take the same proceedings as herein required to be taken in case of joint stock companies; and until such directions shall be complied with the directors shall be personally liable to pay all damages occasioned by such neglect, to any person or body corporate which may be injured thereby. Any transfer of the stock of any stock organized under this act, shall not release the party making the transfer from his liability for losses which may have accrued previous to the transfer.

§ 14. Any existing joint stock company incorporated by this State for either of the purposes mentioned in the first section of this act, may at any time after notice being given for three months in a newspaper published in the county where such company is located, of such intention, and with a written consent of a majority of three-fourths in amount of its stockholders, or if a mutual company, with the unanimous consent of its trustees, extend its original charter to the time specified by the provisions of this act by altering or amending the same, so as to accord with the provisions of this act, and filing a copy of the same so altered or amended, together with a declaration under its corporate seal, signed by its president and directors, of their desire for such extension, and also the written consent of three-fourths of its stockholders, and the unanimous consent of the trustees as aforesaid to such extension, in the office of the secretary of the State, and upon the filing of such consent, declaration and charter, the same proceedings shall be had as are required by the eleventh section of this act, and any of the mutual insurance companies already chartered by the legislature of this State may, after giving ninety days' notice in three of the public papers of the State, change to joint stock companies

by proceeding in accordance with and conforming their charter to the provisions of this act.

§ 15. All charters formed or extended under this act shall be of thirty years' duration each, except those of life insurance, but the legislature may at any time alter, amend, or repeal this act, or dissolve and provide for the closing up the business and affairs of any company formed under it.

§ 16. Suits at law may be maintained by any corporation formed under this act, against any of its members or stockholders, for any cause relating to the business of such corporation; also suits at law may be prosecuted and maintained by any member or stockholder against such corporation for losses which may have accrued if payment is withheld more than two months in all risks after such losses shall have become due.

§ 17. All companies formed under this act shall be deemed and taken to be bodies corporate and politic in fact and in name, and shall be subject to all the provisions of the revised statutes in relation to corporations so far as the same are applicable.

§ 18. No company formed under this act shall, directly or indirectly, deal or trade in buying and selling any goods, wares, merchandise, or other commodities whatever.

§ 19. The trustees and corporators of any company organized under this act, and those entitled to a participation of the profits, shall be jointly and severally liable until the whole amount of the capital raised by the company shall have been paid in and a certificate thereof recorded, as hereinbefore provided. Notes taken in advance of premiums under this act are not to be considered debts of the company in determining whether a company is insolvent, but are to be regarded as assets of the company.

§ 20. No dividend shall ever be made by any company incorporated under this act, when its capital stock is impaired, or when the making of such dividend would have the effect of impairing its capital stock, and any dividend so made shall subject the stockholders receiving the same to a joint and several liability to the creditors of said company to the extent of the dividend so made.

§ 21. In pursuance of this act, it shall be lawful for any mutual company established in conformity with the provisions of the fourth section of this act to unite a cash capital to any extent, as an additional security to the members, over and above their premiums and stock notes, which additional cash capital shall be left open for accumulation, and shall be loaned and invested as provided in the eighth section of this act, and the company may allow an interest on such cash capital, and a participation in its profits, and prescribe the liability of the owner or owners thereof to share in the losses of the company, and such cash capital shall be liable as the capital stock of the company in the payment of its debts.

Circuit Court of the United States, 2d circuit, northern district of New York.

JOHN BLAIR HOGE
vs.
THE UNION INSURANCE COMPANY. } Demurrer.

And the said John Blair Hoge, plaintiff in this suit, saith, that the said plea of the said defendants, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar the plaintiff's declaration, and that he, the said plaintiff, is not bound by the law of the land to answer the same; and this he is ready to verify; wherefore, for want of a sufficient plea in this behalf, the said plaintiff prays judgment, and the said plaintiff, according to the form of the statute in such case made and provided, states and shows to the court here the following causes of demurrer to the said plea:

1st. That said plea contains no new matter constituting a defence.

2d. That the plaintiff's policy of insurance is a valid policy, and authorized by law, and that the premium notes, and all of the assets of the defendants, are equally liable to pay the same.

3d. That the facts stated in the defendants' plea are insufficient to bar the plaintiff's action.

And also for that the said plea is in other respects informal and insufficient.

HENRY R. MYGATT,
Plaintiff's Attorney.

But, because the said court, before the said judges now here, will advise what judgment to give of and upon the premises, a day is therefore given the parties aforesaid, that they be before the judges aforesaid, at Cooperstown, in the State of New York, on the twenty-seventh day of August, in the year one thousand eight hundred and fifty-eight, to hear judgment of and upon the premises, because the said judges now here are not yet advised thereof; at which day and place last mentioned, before the said judges, come the parties aforesaid by their attorneys aforesaid, and all and singular the premises being seen, and by the court here now fully understood, and mature deliberation being thereupon had, it seems to the said court now here before the said judges, and it is adjudged, that the defendants, by the act of the legislature of the State of New York, passed April 10, 1849, entitled "An act to provide for the incorporation of insurance companies," and by the charter of the defendants' company, were authorized to issue policies of insurance for a cash premium in lieu of a premium note, and that as the defendants' policy of insurance was issued for cash only, that the same is a valid policy. And it is further adjudged, that the premium notes of the defendants, and the moneys of the defendants

collected on premium notes, and all of the assets of the defendants, are equally liable for the payment of losses on policies of insurance issued for a cash premium only in lieu of premium notes as for losses on policies of insurance based on premium notes only.

And it is further adjudged, that the demurrer of plaintiff to the defendants' plea be, and the same is hereby sustained, and that judgment final be rendered for the plaintiff in said demurrer, to the amount of two thousand and five hundred dollars, with interest thereon at the rate of seven per cent., from the thirtieth day of June, in the year one thousand eight hundred and fifty-two, with costs to be taxed as provided by law, and that judgment be entered accordingly with the clerk of the court. Therefore it is considered that the said plaintiff recover against the said defendants his said damages to the said two thousand and five hundred dollars, and the interest thereon, amounting to eight hundred and sixty-nine dollars and eight cents; and also one hundred and sixty-four dollars and ninety-eight cents for his costs, by the court now here adjudged to the said plaintiff with his assent; which said damages, interest and costs, in the whole amount to three thousand five hundred and thirty-four dollars and six cents; and the said defendants in mercy, &c.

Judgment signed this the fifteenth day of September, in the year one thousand eight hundred and fifty-eight.

AUG. A. BOYCE,
Clerk of the Circuit Court.

Damages	$2,500 00
Int.	869 08
Costs	164 98
	$3,534 06

United States Circuit Court, 2d circuit, northern district of New York.

THE UNION INSURANCE COMPANY
ads.
JOHN BLAIR HOGE.
} Assignment of Errors.

Afterwards, to wit, on the twenty-second day of September, in this same term, before the judges of the circuit court of the United States for the second circuit and northern district of New York, at the capitol, in the city of Albany, in said State of New York, comes the said the Union Insurance Company, by Henry Van Der Lyn, their attorney, and say that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit, that the declaration aforesaid and the matters therein contained are not sufficient in law for the said John Blair Hoge to have or maintain his aforesaid action thereof

against the said the Union Insurance Company; there is also error in this, to wit, that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid given, was given for the said John Blair Hoge against the said the Union Insurance Company, whereas by the law of the land the said judgment ought to have been given for the said the Union Insurance Company against the said John Blair Hoge; and the said the Union Insurance Company prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of the said judgment, &c.

HENRY VAN DER LYN,
Attorney.

United States Circuit Court, 2d circuit, northern district of New York.

JOHN BLAIR HOGE
vs.
THE UNION INSURANCE COMPANY. } Joinder in Error.

And hereupon, afterwards, to wit, on the said twenty-second day of September, the said John Blair Hoge, by Henry R. Mygatt, his attorney, freely comes here into court, and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he prays that the Chief Justice and the associate justices of the Supreme Court of the United States may proceed to examine, as well the record and proceedings aforesaid, as the matters aforesaid, above assigned for error; and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

HENRY R. MYGATT,
Attorney.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the Judges of the Circuit Court holden in and for the second circuit in and for the northern district of New York, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between John Blair Hoge, plaintiff, and the Union Insurance Company, defendants, in a plea of trespass on the case upon promises, a manifest error has intervened, to the great damage of the said the Union Insurance Company, as in their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that if judgment thereof be given, then under your seal

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you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and the associate justices of the Supreme Court of the United States on the first Monday of December next, at Washington, being the present seat of the national government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, at Washington aforesaid, this twenty-
[SEAL.] second day of September, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-third.

AUGUSTUS A. BOYCE, *Clerk.*

HENRY VAN DER LYN, *Attorney.*

Circuit Court of the United States, 2d circuit, northern district of New York.

JOHN BLAIR HOGE
vs.
THE UNION INSURANCE COMPANY.

I admit due and personal service of citation duly made in this action, and waive each and every irregularity (if any) in the writ of error or the return in this case. Dated September 25th, 1858.

HENRY R. MYGATT,
Att'y for Pl'ff.

Filed 13 Oct., 1858.